IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/03/2003

CORAM

THE HON'BLE MR. JUSTICE A.K. RAJAN

C.R.P.2640 of 2001

Jayaraman .. Petitioner

-Vs-

The Executive Officer,
Kailasanatha Swamy Temple,
Thirumanoor Village,
Ariyalur Taluk,
Perambalur District. .. Respondents

Revision filed against the order dated 22.4.1999 in E.A.70 of 1999 in E.P.No.23 of 1998 in O.S.No.650 of 1979, delivered by the District Munsif Court, Ariyalur.

!For Petitioner : Mr.R.Balasubramanian

^For Respondents : Mr. A.S.Kailasam

:O R D E R

This revision is filed against the order of dismissal of E.A.70 of 1 999 for setting aside the ex parte order dated, 30.3.1999 allowing the Execution Petition No.23 of 1998 for execution of the decree passed in O.S.No.650 of 1979 on 20.4.1981.

2. In the execution petition for delivery of possession, time was given for filing counter to the petitioner herein. Since no counter was filed, execution was ordered and delivery of possession was also effected. It is seen from the records that possession was given to the judgment-holder on 19.4.1999 and the warrant was returned on 20.4.19 99. This application was dismissed on 22.4.1999 on the ground that delivery has already been effected.
3. The learned counsel for the petitioner submitted that even in a case where delivery of possession was effected that can be set aside; in support of the contention, he relied upon a decision in K.C. DATTA v. B.ESTATE (A.I.R. 1972 CALCUTTA 221). That is a case where ex parte decree was executed. Under those circumstances, when the ex parte decree was set aside, though the decree was executed, the execution proceedings were also set aside. To the facts of the case on hand, that decision has no application. In this case, the decree was passed in a contested case; appeal against that was dismissed and the

second appeal was also dismissed. Further, the petitioner had not filed any counter though an opportunity was given; the revision petition allowed the Court to pass the order ex parte. The reason stated in the affidavit filed in support of the petition is that the communication sent by the petitioner's counsel was not received by the petitioner. Under Order III, Rule 4 C.P.C., the notice served on the pleader shall be as effectual as if the same had been served on the party in person. Therefore, it cannot be said that it is an order passed without notice to respondent. The counsel should have asked for extension of time for filing counter, as the counsel also owes a duty to his client. But no such request had been made by the counsel. Under these circumstances, the Court has to presume that the respondent does not have any intention to file a counter. In this case, the Court has presumed and rightly so. In these circumstances, the delivery of possession effected already cannot be nullified merely on the ground that the petitioner has not filed his counter to Ex.A.3. When the petitioner having failed to file the counter, in spite of the opportunity given to him cannot seek to set aside the order on the ground that the petitioner did not receive the communication from his lawyer. In the circumstance, the impugned order does not suffer from any illegality. Hence, there is no reason to set aside the ex parte order for delivering of possession after the delivery had been effected. There is no illegality in the order. Hence, C.R.P. is dismissed.

Index: Yes
Web Site: Yes

vs

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